



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ingenieria Y Construcciones Omega
File: B-233277
Date: January 25, 1989

DIGEST

Where bidder agreed to the 60-day minimum bid acceptance period on its original bid form, but also acknowledged an amendment that changed the minimum period from 60 to 90 days, bid was properly deemed responsive because bidder's blanket acknowledgement of the amendment indicated its acceptance of all amendment terms including the longer bid acceptance period.

DECISION

Ingenieria Y Construcciones Omega protests the award of a contract to Construcciones Electromecanicas, S.A. (Conelsa), under invitation for bids (IFB) No. DACA01-88-B-0049, issued by the Army Corps of Engineers for miscellaneous construction projects throughout Panama. We deny the protest.

The solicitation, issued July 6, 1988, included a bid form requiring a minimum 60-day period for government acceptance of the bid. On July 22, an amendment was issued which changed the minimum bid acceptance period from 60 to 90 days. Included with the amendment was a revised bid form which required the 90-day bid acceptance period. The amendment did not, however, specifically require that bids be submitted on the revised bid form.

Seven bids were received on the bid schedule (there were five different schedules) in question. Conelsa, the low bidder, submitted its bid on the original bid form, on which it had typed "60" in the space provided for the bid acceptance period, but also acknowledged the amendment that changed the minimum acceptance period from 60 to 90 days. The contracting officer initially found the bid nonresponsive for failure to agree to the 90-day bid acceptance period, but thereafter became aware of a decision

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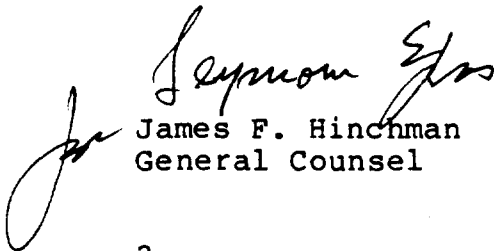
of our Office, Alaska Mechanical, Inc., B-225260.2, Feb. 25, 1987, 87-1 CPD ¶ 216, leading him to conclude that the amendment acknowledgement was controlling, and that the bid therefore was responsive. The Corps thus found Conelsa's bid responsive and awarded the firm the contract on September 30.

Ingenieria contends that Conelsa's bid was at best ambiguous as to the acceptance period being agreed to, and that since, under one of the possible interpretations the bid is nonresponsive, the bid had to be rejected as nonresponsive. Ingenieria maintains that our decision in Alaska Mechanical, Inc. is contrary to our long-standing rules in this area and should not be followed. Alternatively, the protester argues that the decision is distinguishable from the facts here in that Conelsa indicated a different number of days (i.e. 60) for the bid acceptance period than the firm there.

We think Alaska Mechanical, Inc. is clearly controlling under the facts of this case. Indeed, contrary to Ingenieria's assertion of factual differences, the circumstances of that case were virtually identical to those here: the original minimum acceptance period was 60 days; an amendment increased the period to 90 days; and the bidder inserted 60 days on the original bid schedule while acknowledging the amendment. We held that the bidder's acknowledgement of the amendment without taking exception to any of its terms constituted an acceptance of the new terms, noting that the bidder's agreement to the original 60-day minimum tended to indicate the bidder's intent to comply with the new minimum bid acceptance period now desired by the agency. We find no basis for changing our position under the identical facts of this case. Accordingly, we conclude that Conelsa's bid agreed to the 90-day minimum acceptance period and properly was found responsive.

Ingenieria has requested reimbursement of its bid preparation and protest costs. As the protest is without merit, however, there is no basis for allowing these costs. Bid Protest Regulations, 4 C.F.R. § 21.6(d) (1988); American Technical Communications, B-230827, July 15, 1988, 88-2 CPD ¶ 56.

The protest is denied.


James F. Hinchman
General Counsel